# BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

JAY ALAN SALAMON 5350 Toscana Way, Apt. 112 San Diego, CA 92122

Certified Public Accountant Certificate No. CPA 80244

Respondent.

Case No. AC-2012-39

# DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on December 24, 2012.

It is so ORDERED Wovember 26, 2012.

FOR THE CALIFORNIA BOARD OF ACCOUNTANCY

DEPARTMENT OF CONSUMER AFFAIRS

1	Kamala D. Harris			
2	Attorney General of California JAMES M. LEDAKIS			
3	Supervising Deputy Attorney General RON ESPINOZA Deputy Attorney General State Bar No. 176908 110 West "A" Street, Suite 1100			
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7	Facsimile: (619) 645-2061 Attorneys for Complainant			
8	BEFORE THE			
9	CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS			
10	STATE OF CALIFORNIA			
11	In the Matter of the Accusation Against:			
12	JAY ALAN SALAMON  Case No. AC-2012-39			
13	San Diego, CA 92122  San Diego, CA 92122  STIPULATED SURRENDER OF LICENSE AND ORDER			
14	Certified Public Accountant Certificate No. CPA 80244			
15				
16	Respondent.			
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18	In the interest of a prompt and speedy resolution of this matter, consistent with the public			
19	interest and the responsibility of the California Board of Accountancy (CBA) of the Department			
20	of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender of License			
21	and Order which will be submitted to the CBA for approval and adoption as the final disposition			
22	of the Accusation.			
23	<u>PARTIES</u>			
24	1. Patti Bowers (Complainant) is the Executive Officer of the California Board of			
25	Accountancy. She brought this action solely in her official capacity and is represented in this			
26	matter by Kamala D. Harris, Attorney General of the State of California, by Ron Espinoza,			
27	Deputy Attorney General.			
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- 2. Jay Alan Salamon (Respondent) is represented in this proceeding by lay representative Jason Dalley, whose address is 35 SE 6th Avenue, Delray Beach, FL 33483.
- 3. On or about December 8, 2000, the California Board of Accountancy issued Certified Public Accountant Certificate Number CPA 80244 to Respondent Jay Alan Salamon. The Certified Public Accountant Certificate expired on September 30, 2010, and has not been renewed.

# **JURISDICTION**

4. Accusation No. AC-2012-39 was filed before the California Board of Accountancy, Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 18, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. AC-2012-39 is attached as Exhibit A and incorporated by reference.

# ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, fully discussed with his representative Jason Dalley, and understands the charges and allegations in Accusation No. AC-2012-39. Respondent also has carefully read, fully discussed with his representative Jason Dalley, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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# CULPABILITY

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. AC-2012-39, agrees that cause exists for discipline and hereby surrenders his Certified Public Accountant Certificate No. 80244 for the CBA's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the CBA to issue an order accepting the surrender of his Certified Public Accountant Certificate without further process.

## **CONTINGENCY**

- 10. This stipulation shall be subject to approval by the California Board of Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of the California Board of Accountancy may communicate directly with the CBA regarding this stipulation and surrender, without notice to or participation by Respondent or his representative. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the CBA considers and acts upon it. If the CBA fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender of License and Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the CBA shall not be disqualified from further action by having considered this matter.
- 11. The parties understand and agree that copies of this Stipulated Surrender of License and Order, including the signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the CBA may, without further notice or formal proceeding, issue and enter the following Order:

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# <u>ORDER</u>

IT IS HEREBY ORDERED that Certified Public Accountant Certificate No. 80244, issued to Respondent Jay Alan Salamon, is surrendered and accepted by the California Board of Accountancy.

- 1. The surrender of Respondent's Certified Public Accountant Certificate and the acceptance of the surrendered license by the CBA shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the California Board of Accountancy.
- 2. Respondent shall lose all rights and privileges as a Certified Public Accountant in California as of the effective date of the CBA's Decision and Order.
- 3. Respondent shall cause to be delivered to the CBA his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.
- 4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California with the CBA, the CBA shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. AC-2012-39 shall be deemed to be true, correct and admitted by Respondent when the CBA determines whether to grant or deny the petition.
- 5. Respondent shall not apply for licensure or petition for reinstatement to the CBA for one year from the effective date of the Decision and Order.
- 6. Respondent shall pay the CBA its costs of investigation and enforcement of this matter in the amount of \$4,483.58 within ten months after the effective date of the Decision and Order.

Stipulation.rtf

ACCEPTANCE 1 I have carefully read the above Stipulated Surrender of License and Order and have fully 2 discussed it with my lay representative, Jason Dalley. I understand the stipulation and the effect 3 it will have on my Certified Public Accountant Certificate. I enter into this Stipulated Surrender 4 of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the 5 Decision and Order of the California Board of Accountancy. 6 7 10/22/12 DATED: 8 9 Respondent 10 I have read and fully discussed with Respondent Jay Alan Salamon the terms and 11 conditions and other matters contained in this Stipulated Surrender of Ligense and Order. I 12 approve its form and content. 13 DATED: 14 Lay Representative for Respondent 15 ENDORSEMENT 16 The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted 17 for consideration by the California Board of Accountancy of the Department of Consumer 18 Affairs. 19 Dated: //-/- 12 20 Respectfully submitted, 21 KAMALA D. HARRIS Attorney General of California 22 JAMES M. LEDAKIS Supervising Deputy Attorney General 23 24 RON ESPINOZA 25 Deputy Attorney General Attorneys for Complainant 26 27 28 SD2012802278

# Exhibit A

Accusation No. AC-2012-39

KAMALA D. HARRIS Attorney General of California 2 JAMES M. LEDAKIS Supervising Deputy Attorney General RON ESPINOZA Deputy Attorney General State Bar No. 176908 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 6 San Diego, CA 92186-5266 Telephone: (619) 645-2100 Facsimile: (619) 645-2061 Attorneys for Complainant 8 BEFORE THE 9 CALIFORNIA BOARD OF ACCOUNTANCY DEPARTMENT OF CONSUMER AFFAIRS 10 STATE OF CALIFORNIA 11 In the Matter of the Accusation Against: Case No. AC-2012-39 12 JAY ALAN SALAMON 5350 Toscana Way, Apt. 112 ACCUSATION 13 San Diego, CA 92122 14 Certified Public Accountant Certificate No. CPA 80244 15 Respondent. 16 17 18 Complainant alleges: 19 PARTIES 20 Patti Bowers (Complainant) brings this Accusation solely in her official capacity as 21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs, 22. State of California. 23 On or about December 8, 2000, the California Board of Accountancy issued Certified 24 Public Accountant Certificate Number CPA 80244 to Jay Alan Salamon (Respondent). The 25 Certified Public Accountant Certificate expired on September 30, 2010, and has not been 26 renewed. 27 /// 28 ///

#### JURISDICTION

	3.	This Accusation is brought before the California Board of Accountancy (	CBA or
Boar	d), De	partment of Consumer Affairs, under the authority of the following laws.	All section
refer	ences a	are to the Business and Professions Code unless otherwise indicated.	

#### 4. Section 5109 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

# 5. Section 5100 states, in relevant part:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- (a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.
- (g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.
- (j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

#### 6. Section 5106 states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The record of the conviction shall be conclusive evidence thereof. The board may order the certificate or permit suspended or revoked, or may decline to issue a certificate or permit, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made, suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty or dismissing the accusation, information or indictment.

#### 7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

# 8. Section 490 of the Code states:

- (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.
- (d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

#### 9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of

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the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

#### REGULATIONS

10. California Code of Regulations (CCR), Title 16, Section 99 states:

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;
- (b) Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit under Chapter 1, Division III of the Business and Professions Code;
  - (c) Gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052 of the code;
  - (d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.
  - 11. California Code of Regulations, Title 16, Section 99.1 states:

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.
- (3) The time that has elapsed since commission of the act(s) or offense(s) referred to in subdivision (1) or (2).

- (4) The extent to which the applicant or licensee has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant or licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.
  - (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.

#### COST RECOVERY

12. Section 5107, subdivision (a), states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

#### **FACTS**

- 13. Creative Financial Solutions, Inc. (Creative Financial) was a mortgage brokerage firm located in San Diego, California. Started in 2005, Creative Financial provided home financing for buyers. Creative Financial sent loan application packages and other documents to lenders for review and funding. Creative Financial did not itself fund loans, but received commissions from lenders when loans closed.
- 14. Beginning on a date uncertain, and continuing through at least November 2006, Creative Financial and their employees engaged in a mortgage fraud scheme. As part of the scheme, Creative Financial obtained mortgage loans for unqualified and/or unknowing borrowers by submitting fraudulent mortgage loan applications. Creative Financial utilized Respondent Jay Alan Salamon, a Certified Public Accountant (CPA) in San Diego, to verify employment for individual borrowers. Creative Financial employees placed fraudulent CPA letters signed by Respondent in some of the loan applications stating that Respondent had prepared income tax returns for the borrower and that the borrower was self-employed. These letters were untrue and were prepared by Respondent in exchange for approximately \$100 each.

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15. In or about March 2006, at the request of Creative Financial, Respondent knowingly prepared a false CPA letter as part of a loan application package stating that he had prepared income tax returns for the borrower, R.C., for the past two years. Respondent, however, had never prepared tax returns for the borrower, and was unaware of the borrower's employment or income. Respondent knew that the false CPA letter he prepared would be submitted to a lender to obtain a property loan, and that the lender would be relying upon the false CPA letter to determine whether to fund the loan.

# FIRST CAUSE FOR DISCIPLINE

# (Criminal Conviction for Aiding and Abetting Wire Fraud)

- 16. Respondent is subject to disciplinary action under sections 5100(a) and 490 of the Code in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a Certified Public Accountant. The circumstances are as follows:
- a. In or about March 2006, in violation of Title 18, United States Code, Sections 1343 and 2, Respondent aided and abetted Creative Financial Solutions, Inc., to commit wire fraud by knowingly preparing a false CPA letter as part of a loan application package to lender Fremont Investment, as alleged in paragraphs 13-15 above, which are hereby incorporated by reference.
- b. On or about June 22, 2010, in a criminal proceeding entitled *United States of America v. Jay Alan Salamon*, in United States District Court, Southern District of California, Case No. 10CR2427-WQH, before a Magistrate Judge, Respondent pled guilty to violating Title 18, United States Code, Sections 1343 and 2 (aiding and abetting wire fraud), a felony. On or about July 7, 2010, the District Court accepted Respondent's guilty plea and he was convicted thereon.
- c. On or about October 17, 2011, as a result of the conviction, Respondent was sentenced by the District Court to federal prison for ten months, and ordered to pay \$287,719.27 in restitution. The District Court further ordered that following release from prison, Respondent was to be placed on supervised release for three years.

#### SECOND CAUSE FOR DISCIPLINE

(Knowing Preparation of False Financial Information)

17. Respondent is subject to disciplinary action under section 5100(j) of the Code in that in or about March 2006, he knowingly prepared a false CPA letter as part of a loan application package to lender Fremont Investment, fraudulently attesting to the borrower's employment and income, as alleged in paragraphs 13-15 above, which are hereby incorporated by reference.

## **PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

- 1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate No. 80244 issued to Jay Alan Salamon;
- 2. Ordering Jay Alan Salamon to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: JUNE 14, 2012

Executive Officer

California Board of Accountancy Department of Consumer Affairs

State of California Complainant

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